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Attorney for Defendant  
FAN FAIR INC. d/b/a MARIN  
COUNTY SPORTS

**UNITED STATES DISTRICT COURT**  
**FOR THE NORTHERN DISTRICT OF CALIFORNIA**  
**OAKLAND DIVISION**

SCOTT SERIO,	)	CASE NO. 3:16-cv-00438-CW
	)	
Plaintiff,	)	
	)	
v.	)	<b>DEFENDANT FAN FAIR INC. d/b/a MARIN</b>
	)	<b>COUNTY SPORTS' ANSWER TO SERIO'S</b>
	)	<b>FIRST AMENDED COMPLAINT FOR</b>
FAN FAIR INC. d/b/a MARIN COUNTY	)	<b>COPYRIGHT INFRINGEMENT; DEMAND</b>
SPORTS,	)	<b>FOR JURY TRIAL</b>
	)	
Defendant.	)	

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1 Defendant Fan Fair, Inc. d/b/a Marin County Sports (“Defendant”) hereby responds to the First  
2 Amended Complaint (“Complaint”) of Plaintiff Scott Serio (“Plaintiff”):

3 **Substance of the Action**

4 1. Defendant is without knowledge or information sufficient to form a belief as to the truth of  
5 the allegations of paragraph 1, and therefore denies them.

6 **The Parties**

7 2. Defendant is without knowledge or information sufficient to form a belief as to the truth of  
8 the allegations of paragraph 2, and therefore denies them.

9 3. Defendant admits that it is a corporation organized under the laws of Arizona but denies  
10 the remainder of the allegations in this paragraph. Fan Fair, Inc.’s principal place of business is located  
11 at 22520 N. 38th Pl., Phoenix, AZ 85050.

12 **Jurisdiction and Venue**

13 4. Defendant admits this action purports to invoke the copyright laws of the United States  
14 under Title 17, United States Code. Defendant further admits that 28 U.S.C. §1338(a) and 28 U.S.C. §  
15 1331 confer jurisdiction upon this Court as to claims arising under the copyright act, and arising under  
16 the laws of the United States.

17 5. Defendant denies that this Court has personal jurisdiction over Defendant, and denies any  
18 remaining allegations in paragraph 5. None of the activities of Defendant that are identified in the  
19 complaint occurred in this District. Defendant has not sold any copies of the allegedly copyrighted  
20 photograph in this District. Defendant has not shipped any copies of the alleged copyrighted photograph  
21 to this District. Defendant has not posted any content to eBay or any other e-commerce platforms from  
22 within this District. On information and belief, Plaintiff resides in Maryland. Defendant sold and  
23 shipped a copy of the allegedly copyrighted photograph to someone named Scott Serio in Maryland,  
24 which is not within this District.

25 6. Defendant specifically denies that it committed copyright infringement, willfully or  
26 otherwise, and denies any remaining allegations in paragraph 6.

1           7.       Denied. Defendant incorporates by reference its responses to the allegations of paragraphs  
2 5, above.

3                                   **Facts Common to All Claims for Relief**

4           8.       Defendant is without knowledge or information sufficient to form a belief as to the truth of  
5 the allegations of paragraph 8, and therefore denies them.

6           9.       Defendant is without knowledge or information sufficient to form a belief as to the truth of  
7 the allegations of paragraph 9, and therefore denies them.

8           10.      Defendant is without knowledge or information sufficient to form a belief as to the truth of  
9 the allegations of paragraph 10, and therefore denies them.

10          11.      Defendant is without knowledge or information sufficient to form a belief as to the truth of  
11 the allegations of paragraph 11, and therefore denies them.

12          12.      Defendant is without knowledge or information sufficient to form a belief as to the truth of  
13 the allegations of paragraph 12, and therefore denies them.

14          13.      Defendant is without knowledge or information sufficient to form a belief as to the truth of  
15 the allegations of paragraph 13, and therefore denies them.

16          14.      Defendant admits that it has operated, and continues to operate, an Internet store under the  
17 name Marin County Sports, where Defendant has sold and continues to sell sports memorabilia. Except  
18 as so admitted, Defendant denies all other allegations contained in paragraph 14.

19          15.      Defendant is without knowledge or information sufficient to form a belief as to the truth of  
20 the allegations of paragraph 15, and therefore denies them.

21          16.      Defendant admits that it posted a photograph of the horse American Pharaoh on eBay with  
22 the asking price of \$4.99. Defendant admits that it sold at least one copy of that photograph, which was  
23 not marked as copyrighted. Furthermore, the photograph attached to the Complaint as Exhibit A contains  
24 no copyright notice or copyright registration information. Except as so admitted, denied.

25          17.      Defendant incorporates by reference its responses to the allegations of paragraph 16  
26 above. Except as so admitted, denied.

**ANSWER TO CLAIM FOR RELIEF**

1  
2 1. Defendant incorporates by reference its responses to the allegations of paragraphs 1  
3 through 17 above as its response to paragraph 1 of Plaintiff's "Claim For Relief Direct Copyright  
4 Infringement."

5 2. Defendant admits that photographs are copyrightable works. Except as so admitted,  
6 denied.

7 3. Denied.

8 4. Denied.

9 5. Denied.

10 6. Denied.

11 7. Denied.

12 8. Denied.

**RESPONSE TO PRAYER FOR RELIEF**

13  
14 Paragraphs 1-8 after the "WHEREFORE, Plaintiff demands judgment in his favor as follows" in  
15 the complaint set forth a statement of the relief requested by Plaintiff, to which no response is required.  
16 Defendant denies that Plaintiff is entitled to any of the requested relief and denies any allegations in the  
17 request for relief to which a response is required.

**AFFIRMATIVE DEFENSES**

**First Defense – No Personal Jurisdiction**

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19  
20 1. This Court does not have personal jurisdiction over Defendant. Defendant incorporates by  
21 reference its responses to the allegations of paragraphs 1 through 17 above.

**Second Defense – Innocent Infringer**

22  
23 2. Defendant admits that it posted a photograph of the horse American Pharaoh on eBay with  
24 the asking price of \$4.99. Defendant admits that it sold at least one copy of that photograph, which was  
25 not marked as copyrighted. Defendant has removed that photo from eBay and is no longer selling it or  
26 offering it for sale. Defendant profited less than \$50 from sales of the allegedly copyrighted photograph.

1 DATED: November 4, 2016

GREENBERG TRAURIG, LLP

2  
3 By /s/ Nicholas A. Brown

4 Nicholas A. Brown

5 Attorney for Defendant

6 FAN FAIR INC. d/b/a MARIN COUNTY SPORTS  
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**CERTIFICATE OF SERVICE**

**I HEREBY CERTIFY** that on this date, I electronically filed the foregoing document with the Clerk of the court by using the CM/ECF system which will send a notice of electronic filing to all counsel of record.

Dated: November 4, 2016

/s/ Nicholas A. Brown

Nicholas A. Brown